

# PROVIDER ISSUES IN CABINET FOR HEALTH AND FAMILY SERVICES ADMINISTRATIVE HEARINGS

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# CHFS

## ADMINISTRATIVE HEARINGS

### ➤ F&C AHB: Eligibility and Other Hearings

- ✓ 2012: 1957 cases
- ✓ 2012: 593 Medicaid eligibility cases

### ➤ HS AHB: Service and Other Hearings

- ✓ 2012: 1472 cases
- ✓ 2012: 696 Medicaid service cases;  
485 MCO cases;  
211 FFS cases;  
59 Provider Repayment cases; and  
7 Provider Termination cases

# CHFS

## ADMINISTRATIVE HEARINGS: OUR GOALS

- Expert
- Timely
- Responsive
- Fair

# HEARINGS and TRIALS

- Legislative Branch: Enact Law
- Judicial Branch: Adjudicate Law
- Executive Branch: Enforce Law  
Promulgate Law and  
Adjudicate Law

# DUE PROCESS IN ADMINISTRATIVE HEARINGS

- Constitutional Protections
- Fundamental Fairness
- KRS Chapter 13B

# DUE PROCESS IN ADMINISTRATIVE HEARINGS

- Timely and Adequate Notice
- Meaningful Opportunity to be Heard
- Impartial Decision Maker

# Hearings Basics

1. Service Denial: Cabinet or MCO sends Adverse XN Letter
2. Patient Request for a Grievance Review
  - ✓ w/i 30 days event: 907 KAR 17:005 Sec. 4(2)
  - ✓ Grievance Process is now Mandatory:  
907 KAR 17:005 Sec. 5(1)
3. MCO Grievance Procedure
  - ✓ 30 days for decision: 907 KAR 17:005 Sec. 4(2)(b)
  - ✓ Expedited decision if standard time would jeopardize patient's life, health, or ability to achieve maximum functioning: 907 KAR 17:005 Sec. 4(14)

# Hearings Basics

## 4. Adverse XN Letter

- ✓ Must provide law and facts in sufficient detail to allow adequate preparation: 907 KAR 17:005 Sec. 4(20)

## 5. Patient Request for a Hearing

- ✓ w/i 45 days in MCO cases: 907 KAR 17:005 Sec 5(3)(b)
- ✓ w/i 30 days in FFS cases: 907 KAR 1:563 Sec 4(2)

## 6. Hearing before AHO

- ✓ w/i 30 days of Req for Hrg: 907 KAR 1:563 Sec 6(2)



# Hearings Basics

7. Hearing Officer's Recommended Order
  - ✓ w/i 30 days of Hearing: 907 KAR 1:563 Sec. 6(2)
8. Exceptions to Recommended Order/ Request for Cabinet Level Review
  - ✓ w/i 15 days of Rec Order: 907 KAR 1:563 Sec. 6(2)
9. Review by Secretary/Final Order
  - ✓ w/i 90 days of Req. for Hrg: 907 KAR 1:563 Sec. 9(3)
10. Appeal to Circuit Court and beyond
  - ✓ w/i 30 days of Final Order: 907 KAR 1:563 Sec. 10(2)

# Providers as Authorized Representatives (effective now)

- Provider must have member's "written consent"
  - ✓ 907 KAR 17:010 Sec. 4(4)(a)
- For the "specific action" being appealed
  - ✓ 907 KAR 17:010 Sec. 4(4)(a)
- Consent form must be signed and dated by member "no earlier than date of MCO action"
  - 907 KAR 17:010 Sec. 4(4)(b)

# Providers as Authorized Representatives (effective soon)

- Provider must have member's "written consent"
  - ✓ 907 KAR 17:010 Sec. 4(4)(a)
- For the "specific action" being appealed
  - ✓ 907 KAR 17:010 Sec. 4(4)(a)
- "Written consent must be "unique to an appeal or state fair hearing."
- A single written consent qualifies for only one "hospital admission, provider visit, or treatment plan."
  - ✓ 907 KAR 17:010 Sec. 4(4)(b)(2)(a), (b), and (c)

# Prior Authorization

- Required for all MCO listed services except “physical or behavioral emergency services”:
  - ✓ See 907 KAR 17:015 Sec. 2(12).
- Emergency services must be:
  - ✓ “A covered service”
  - ✓ “Medically necessary”
  - ✓ “Authorized after provided”
- See also “Prudent layperson standard”: “acute symptoms of sufficient severity such that w/o immediate medical attention the person (or unborn child) could reasonably expect serious jeopardy to health, serious impairment to bodily function, or serious dysfunction of organs”:
  - ✓ See 907 KAR 3:130 Sec. 1(4).

# MEDICAL NECESSITY

- "Clinical appropriateness" (based on Interqual standards) is only one factor considered in determining medical necessity.
  - ✓ 907 KAR 3:130 Sec. 1(1)
  
- "Medical necessity determination": 907 KAR 3:130 Sec. 2(1)
  - ✓ Must consider program criteria (e.g., EPSDT, 907 KAR 11:034, or Psychiatric Hospital Services, 907 KAR 10:016, etc.)
  - ✓ Reasonable and required to identify, diagnose, treat, palliate, or prevent disease, illness, injury, or disability
  - ✓ Appropriate service in amount, scope, and duration based on "generally accepted standards of practice"

# MEDICAL NECESSITY

- Determination of what is a covered benefit or medically necessary must be based on individualized assessment of member's medical needs:
  - ✓ 907 KAR 3:130 Sec. 2(1)(a)
  
- CHFS has "final authority to determine clinical appropriateness **AND** medical necessity":
  - ✓ 907 KAR 3:130 Sec. 2(2)

# LRC Website for State Law

<http://www.lrc.ky.gov/law.htm>

This website provides access to all of Kentucky's statutes and regulations searchable by Chapter, Title, or keyword

The End